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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the joint mission charged with investigating allegations of massacres and other human rights violations occurring in eastern Zaire (now Democratic Republic of Congo) since September 1996, pursuant to paragraph 6 of Commission on Human Rights resolution 1997/58.

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Report of the joint mission charged with investigating allegations of massacres and other human rights violations occurring in eastern Zaire (now Democratic Republic of the Congo) since September 1996

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I. INTRODUCTION

A. Origins of the joint mission

1. In its resolution 1997/58 of 15 April 1997, the Commission on Human Rights requested the Special Rapporteur on the situation of human rights in Zaire,[2] the Special Rapporteur on extrajudicial, summary and arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances to carry out a joint mission to investigate allegations of massacres and other issues affecting human rights which had arisen from the situation prevailing in eastern Zaire since September 1996 and to report to the General Assembly by 30 June 1997 and to the Commission at its fifty-fourth session.

2. By that resolution, the Commission was acting on the recommendation made by the Special Rapporteur on the situation of human rights in Zaire following a preliminary mission, sent at the recommendation of the High Commissioner for Human Rights.[3] In his report to the Commission on Human Rights at its fifty-third session, the Special Rapporteur on the situation of human rights in Zaire had recommended that, in conformity with the procedure laid down in Economic and Social Council resolution 1235 (XLII), the Commission should decide to investigate the gross violations of the right to life committed in eastern Zaire against refugees and the local population, by establishing a commission which could comprise representatives of the competent organs responsible for implementing the special public procedures of the Commission on Human Rights and which should be provided with all necessary technical and financial support, including the participation of forensic experts, anthropologists, ballistics experts and such other experts as were required.

B. Contacts between the High Commissioner and the Alliance des forces démocratiques pour la libération du Congo-Zaire (AFDL)

3. On 22 April, the Officer-in-Charge of the Office of the High Commissioner for Human Rights was informed by the Assistant Secretary-General for Political Affairs that the joint United Nations/Organization of African Unity Special Representative for the Great Lakes region had received from the AFDL President Laurent Désiré Kabila, in South Africa, a promise that he would facilitate the work of the joint mission.

4. On 25 April, the Officer-in-Charge of the Office of the High Commissioner for Human Rights, Mr. Ralph Zacklin, wrote to the President of the Alliance, on behalf of the joint mission, informing him that the mission would arrive in Goma, from Kigali, on 4 May and requesting his assistance in ensuring that the mission, which would be preceded by a team of officials from the Centre for Human Rights and security officers, would be able to perform its task.

5. On 30 April, the Secretary-General, reaffirming a statement made by its President on 24 April, called on AFDL and the other parties concerned to cooperate fully with the joint mission by ensuring access to the areas and sites under investigation, as well as the security of all members of the mission.

6. On 28 April, the AFDL Commissioner-General for Justice, Mwenze Kongolo, informed the Officer-in-Charge of the Office of the High Commissioner for Human Rights that he agreed in principle to the investigation, while expressing disappointment that the Alliance had not been invited to participate in that effort and objecting to the participation of the Special Rapporteur on the situation of human rights in Zaire, Mr. Roberto Garretón, who, he said had benefited from his assistance during his preliminary visit and had written a superficial report on him which was not, he felt, impartial. He proposed moreover, that the mission's visit should be delayed in order to allow investigators from the AFDL Justice Department to take part in the investigation. Otherwise, AFDL would not be prepared to allow the mission into the liberated areas.

7. This letter and a telephone conversation between the Officer-in-Charge of the Office of the High Commissioner for Human Rights and Commissioner Kongolo were nevertheless taken as a green light for the visit, or at least a "yellow light". On 1 and 2 May, the Officer-in-Charge informed the Commissioner that last-minute preparations were under way for the visit, that negotiators had been sent to settle the details and that the mission would arrive in Kigali on 3 May. AFDL agreed to receive the mission's emissaries in Lubumbashi on 4 May 1997.

C. Mandate and methodology of the joint mission

8. Prior to its departure, the joint mission held two days of consultations in Geneva to analyse its own mandate and the modalities which it would follow in performing its task. During these two days, the members of the mission met with the Officer-in-Charge of the Office of the High Commissioner for Human Rights and with representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the Department of Humanitarian Affairs and various non-governmental organizations working in the region. They also met with the Chargé d'affaires of Zaire to the international organizations in Geneva and with a Mr. E. Angulu, whom the joint mission contacted because he had been claiming to be the AFDL spokesman in Europe. However, it should be noted that the Alliance authorities told the joint mission's negotiators, in Lubumbashi, that they had no knowledge of any such person.

Mandate

9. The members of the joint mission analysed the mandate, entrusted to them by the Commission on Human Rights under its resolution 1997/58, in an internal document entitled "Mandate". According to this document, the mandate was understood to cover:

(a) Ratione materiae, allegations of grave and massive violations of human rights, especially the right to life, and violations of international humanitarian law, particularly article 3 common to the Geneva Conventions;

(b) Ratione loci, eastern Zaire and any other part of the territory of Zaire caught up in the conflict between government troops and AFDL combatants, as well as any other place or country which the mission might decide to visit;

(c) Ratione temporis, the period between 1 September 1996 and the end of the fifty-fourth session of the Commission on Human Rights;

(d) Ratione personae, the acts and deeds of anyone involved in the conflict in the territory in question, whether soldiers of the Zairian armed forces, AFDL combatants, mercenaries or foreign troops participating in the hostilities.

Methodology

10. A word of caution is in order regarding the preliminary nature of this report. It was understood among the members of the joint mission that the mission would concentrate on verifying whether the acts committed had been systematic and planned and whether some of them constituted acts of genocide under the terms of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948.

11. It was also understood that the mandate of the joint mission included gathering information that would help to establish the responsibility of those accused of the acts to be investigated.

12. Until the mission is able to conduct its visits in situ in conformity with the provisions of Commission on Human Rights resolution 1997/58, it will be difficult to regard its findings as definitive, even if the information analysed supports them. It is nevertheless possible to present the situation as it appears on the ground, to make an initial legal analysis and to formulate preliminary conclusions and recommendations.

13. The present report is submitted pursuant to resolution 1997/58, entitled "Situation of human rights in Zaire". It is divided into eight sections. The introduction described the origins and mandate of the joint mission. Section II describes the conduct of the mission and its activities on the ground. Section III presents the objections of the Alliance and the position of the joint mission. In section IV, the mission examines attacks on refugee camps and the situation of internally displaced persons. Section V deals with allegations of massacres and other human rights violations. In section VI, the joint mission analyses the situation in eastern Zaire from the standpoint of the provisions of international law, more particularly those relating to crimes against humanity, the crime of genocide and international humanitarian law. Lastly, section VII presents the mission's future activities and section VIII its conclusions and recommendations.

II. CONDUCT OF THE MISSION

14. The joint mission consisted of three components:

(a) A delegation of negotiators responsible for obtaining the Alliance's agreement on the modalities of the mission and for ensuring security;

(b) A United Nations team responsible for evaluating security in the region and establishing the conditions of that security;

(c) The members of the mission as such, namely, the independent experts belonging to the joint mission and their technical assistants.

A. Contacts by the delegation of negotiators

15. On 28 April, a team consisting of two officials of the Centre for Human Rights went to Kigali, from which point they were to proceed to Goma in order to begin talks with the Alliance to settle the details of the mission's visit. The negotiators had to wait until 4 May for the Alliance's authorization to go to Goma.

16. On 4 May, these two officials appointed by the joint mission finally reached Goma; from there, they went on to Lubumbashi on 5 May. After encountering numerous obstacles, they succeeded in contacting the Commissioner for Justice, Mwenze Kongolo; the Commissioner for Foreign Affairs, Bizima Karaha; the General Commissioner for Information; and the Chef de Cabinet of the AFDL President. In the course of two meetings, each of which lasted more than two hours, they explained the mission's mandate. The Commissioner for Justice finally submitted a document containing the Alliance's comments on the proposed investigation, an analysis of which appears below.

17. The delegation returned to Kigali after six days of fruitless efforts to persuade the Alliance to accept the mission's mandate, as approved by consensus by the Commission on Human Rights, despite the concomitant efforts being made to that end from Geneva, New York and Kigali.

B. The role of the security team

18. The joint mission sent a security expert to the region. His evaluation report shows that many Alliance soldiers, all of whom are very young, react very negatively to the prospect of an investigation of their actions. In particular, the name of one member of the joint mission appointed by the Commission on Human Rights came up in all contacts. Strikingly, all the young soldiers seemed to be perfectly aware of the mandate and objectives of the joint mission, despite the relative isolation of eastern Zaire. They appeared to have received explicit instructions in this regard.

19. The report indicates that travel outside Goma was particularly complicated for security reasons.

20. The report notes the following three significant incidents:

(a) The first incident took place at a military roadblock near Sake, when a United Nations security officer tried to go to Masisi. About 2 kilometres from the roadblock, he came upon an AFDL patrol led by a soldier who was about 15 years old. While the United Nations official was talking to him, another soldier, about 14 years old, fired five shots in his direction at a distance of less than 10 metres; there was no reaction from the patrol leader. The soldier who fired said that it had been an accident. The leader, however, commented

that the Alliance did not need "foreigners from the United Nations to come and make sure that the soldiers aren't hurting anyone";

(b) The second incident consisted of a military parade, accompanied by military songs, which took place just as the United Nations security officer was finishing making reservations for the members of the joint mission, in anticipation of authorization of the visit at a hotel reception desk;

(c) The third incident was the following: the United Nations security officer was accosted as he left the town of Goma. Some soldiers asked him whether he was with the joint mission. He answered in the affirmative. They told him that they had heard about the mission on British Broadcasting Corporation (BBC) Radio and that they knew from their superiors that it would go to Southern Kivu. At that point, one of the soldiers fired a shot over the officer's head, telling him that it was meant as a warning to a specific member of the joint mission never to come back to the area.

21. The report concludes that, according to all the information and testimony gathered there is a permanent atmosphere of insecurity and extreme tension in the area.

22. It should be noted that many people succeeded in contacting the United Nations security officer to recount the dramatic incidents which they had experienced and the human rights violations which they had suffered.

C. Activities of the joint mission in Kigali

23. While waiting in Kigali for authorization to visit eastern Zaire, the members of the joint mission studied all the available documentation and heard many spontaneous testimonies. They met with representatives of United Nations agencies, non-governmental organizations and members of the diplomatic corps accredited to Kigali. They also talked to journalists arriving from Kisangani and others who had spent many months in the region, and heard the testimony of repatriated former Rwandan refugees. They viewed filmed testimonies and unpublished photographs, all of which helped to shape the opinion presented in this report. The joint mission studied a total of 33 reports of agencies and testimonies of victims; it also saw many photographs and a videotape of massacre sites and mass graves. Many of the accounts and written reports were confirmed orally by their authors.

24. The members of the joint mission had to return to Geneva without managing to visit the area where they were to conduct the investigation. They made this fact public in a press release issued on 9 May 1997. Although the mission was unable to attain its primary objectives, its presence in Kigali, in addition to enabling it to gather the information mentioned above, served to draw the attention of the international community to the importance of including the issue of human rights in the process of conflict settlement and political transition in Zaire.

III. OBJECTIONS OF THE ALLIANCE AND POSITION OF THE JOINT MISSION

A. Objections of the Alliance

25. The Alliance's objections primarily concern the content of the report of the preliminary mission conducted by the Special Rapporteur on the situation of human rights in Zaire, the composition of the joint mission and, in particular, the participation of Mr. Roberto Garretón, as well as the mandate of the joint mission.

Report of the preliminary mission and composition of the joint mission

26. The Alliance, in the document which its Commissioner for Justice submitted to the negotiators appointed by the joint mission, complains that it did not see the report of the preliminary mission[4] until 5 May, when it received a copy from one of the negotiators. It also complains of not having been invited to Geneva by the United Nations Commission on Human Rights.

27. With respect to the composition of the joint mission, the Alliance expresses "serious reservations" about the participation of the Special Rapporteur on the situation of human rights in Zaire, Mr. Roberto Garretón, for the following reasons:

(a) His report relied on the statements of Kamanda wa Kamanda, Minister for Foreign Affairs of Zaire, as almost irrefutable evidence of the allegations made against the Alliance; and

(b) He did not propose to conduct any investigation of human rights violations committed during the ethnic conflicts in Zaire.

Mandate and modalities of the investigation

28. Another of the Alliance's objections is that the mandate of the joint mission is limited to the period after 1 September 1996, when the war began, a time-frame which, it claims, was proposed by the Kinshasa Government. It suggests:

(a) That the mission should investigate the incidents that took place after 20 March 1993, when a conflict broke out in Northern Kivu which claimed many victims in Masisi, Rutshuru, Kalehe, Lubero, Goma and Nyragongo;

(b) That an investigation should be conducted on the alleged victims of the Zairian armed forces after the death of Colonel Makabe, the alleged victims of Zairian soldiers in the refugee camps between 1994 and 1996 and the acts of genocide committed by the INTERAHAMWE;

(c) That an investigation should also be conducted into the cases of Rwandan refugees in Zaire who died as a result of cholera and dysentery, as well as into the refusal of the INTERAHAMWE militias in the refugee camps to lay down their arms.

29. The document submitted by the Alliance proposes some practical modalities for cooperation, in particular:

(a) That the investigation should take opposing viewpoints into account, that it should be conducted with the participation of a team of four national experts, that joint working meetings should be held and that the confidentiality of the testimony to be heard by the joint mission should be guaranteed, with the Alliance giving the necessary security guarantees;

(b) That the Special Rapporteur on the situation of human rights in Zaire, Mr. Roberto Garretón, should not participate in the investigation because of the positions previously taken by him.

30. AFDL added two other conditions orally: the participation of observers from the Organization of African Unity and verification of the selection criteria for the legal experts.

B. Position of the joint mission

31. The joint mission rejected all of the above-mentioned conditions for the following reasons.

Report of the preliminary mission

32. In the first place, the joint mission points out that the report of the preliminary mission conducted by the Special Rapporteur on the situation of human rights in Zaire[4] was published on 2 April and could have been consulted by any interested person, since it was a document for general distribution. Moreover, it is hard to understand how, if AFDL did not see the report until 5 May, it could have expressed reservations about the impartiality of the report's author and refused to agree to his participation in the joint mission as far back as 27 April, if not earlier. In addition, AFDL does not invoke any legally established basis to justify its protest at not having been officially invited by the Commission on Human Rights to participate in the debates of its latest session.

33. With regard to the quotations taken from a communiqué from the then Minister for Foreign Affairs, Mr. Kamanda wa Kamanda, contained in the preliminary report, the joint mission notes that the report[5] mentions 50 incidents involving grave violations of the right to life and that only in relation to five of them is there a reference to a report by Mr. Kamanda, presented as only one of the sources cited. Moreover, the references to this information are designed to prove the obvious contradictions between the figures deriving from different sources.[6] The report does not in any way accord Mr. Kamanda's report the status of "almost irrefutable" evidence or even simply an established presumption of evidence.

Mandate and modalities of the investigation

34. The accusation that the Special Rapporteur on the situation of human rights in Zaire refused to conduct investigations into the human rights violations

committed between 1993 and 1996 during the ethnic conflicts in Kivu is unfounded. Indeed:

(a) In his first report on the situation of human rights in Zaire in 1994, the Special Rapporteur studied the ethnic conflicts in Northern Kivu, specifically following the Ntoto market massacre in March 1993, and also the participation of the Nande, Nyanga and Hunde ethnic groups and the support of the Zairian armed forces for the aggressors;[7]

(b) In his second report, concerning the year 1995, the Special Rapporteur again looked at the question in depth;[8]

(c) Moreover, during a mission to Rwanda in July 1996, the Special Rapporteur made a special investigation of the events in Northern Kivu to which AFDL is now referring. The investigation was carried out in Rwanda because the Kinshasa authorities had not authorized the Special Rapporteur to enter Zaire, and in the corresponding report, the responsibility of the Zairian Government is clearly established;[9]

(d) His third annual report[10] updated the information contained in the report on his latest mission.

35. The period covered by the investigation was established by the Commission on Human Rights, by consensus, not by the members of the mission.

36. The question of Rwandan refugees who died as a result of cholera or dysentery falls within the mandate of the joint mission. As to the refusal of the Interahamwe militia[5] to lay down their arms, the joint mission stresses that this question was taken up by the Special Rapporteur on the situation of human rights in Zaire in his earlier reports.[11]

37. The mission cannot accept the Alliance's "practical modalities for cooperation" because they are totally incompatible with the mandate established by Commission on Human Rights resolution 1997/58:

(a) The joint mission cannot change its composition, which was determined by a consensus resolution of the Commission on Human Rights, either by removing one of the appointed members or by including persons not mentioned by the Commission, who would be both judges and parties. Indeed, in its resolution 1997/58, the Commission on Human Rights set up a team to carry out a joint mission to investigate the allegations in question. The mission cannot exclude one of its members without going back on the mandate entrusted to it. Moreover, it would be inappropriate for one of the parties under investigation to choose the persons who are to carry out the investigation; by the same logic, each of the other parties covered by the investigation (Zairian armed forces, former Rwandan armed forces and Interahamwe, mercenaries, etc.) could object to the participation of any one of the mission's members or demand the presence of their representatives;

(b) It would also be inappropriate to include observers from a body which is not mentioned in the resolution and whose participation would have to be

agreed upon and accepted by the Commission on Human Rights and the Organization of African Unity;

(c) The legal experts are performing their duties at the request of the joint mission, which approved their participation after satisfying itself as to their capabilities and their vast experience acquired while carrying out similar tasks within the United Nations. It is for the joint mission to analyse their observations and to evaluate them, under its responsibility, in the report.

IV. ATTACKS ON REFUGEE CAMPS

38. The tragedy which led the Commission on Human Rights to order investigations to be undertaken in eastern Zaire - a decision supported by the Security Council - was the existence of allegations that massacres had been committed inside the camps of Rwandan refugees who had entered Zaire after the Tutsi genocide and the massacres of moderate Hutus in Rwanda in 1994. The very existence of these camps was one of the causes that triggered the conflict in eastern Zaire - reason enough for devoting an entire section to this issue.[12]

39. Following the victory of the Rwandan Patriotic Front in Rwanda, some 1.2 million people, most of them Hutus, fled to Zaire. Among them were routed former members of the Rwandan armed forces and militia members known as Interahamwe or "those who attack together". Many testimonies referred to by the Special Rapporteur on the situation of human rights in Zaire in his report[9] emphasize their savagery, as well as their incursions into Rwanda to eliminate witnesses of the genocide;[13] such incursions are also being made into Uganda and it is feared that they will be made into Burundi.[14] This massive refugee presence inflicted tremendous damage on Zaire's economy and environment and led to violent incidents between the refugees and the Zairian armed forces and also the local population, who saw thousands of their fellow countrymen leave in search of security and better living conditions.

40. According to AFDL forces and the Rwandan Government, most of the refugees are persons guilty of genocide, members of the former Rwandan armed forces and members of the Interahamwe militias,[15] whether they are in the camps, hiding in the forests, have laid down their arms or are ill. A Mr. E. Angulu, who claims to be the AFDL representative in Europe and is regarded as such in various circles, told the joint mission that until the refugees are separated from members of the former Rwandan armed forces and the Interahamwe, they will all be viewed as the enemy, since they serve as its shield.

41. One cannot, of course, ignore the presence of persons guilty of genocide, soldiers and militia members among the refugees. Unfortunately, the Government of Zaire repeatedly opposed attempts to remove them, despite repeated requests from UNHCR and from the Special Rapporteur on the situation of human rights in Zaire. It is nevertheless unacceptable to claim that more than 1 million people, including large numbers of children, should be collectively designated as persons guilty of genocide and liable to execution without trial.

Direct attacks by soldiers and/or civilians under the command of Alliance forces

42. According to the information received, savage attacks were launched early on in the war against the camps housing both Rwandan and Burundi refugees at Uvira (22 and 23 October), Bukavu (29 October and the following days), Goma (3 November) and on the outskirts of these towns. It mattered little whether or not the victims were persons guilty of genocide, Interahamwe, members of the former Rwandan armed forces or even intimidators. The same was true of the attacks on the Shabunda camp in mid-January 1997 and the Tingi-Tingi and Amisi camps in February. According to witnesses, the clashes and attacks were followed by massacres of refugees and murders of non-combatant civilians, almost all of whom were Hutus.

43. According to the data available, of 1.2 million refugees who settled in Zaire in or after July 1994, 1,150,000 were still in the refugee camps when the conflict began in September 1996. The arrival of the rebels and the attacks on the camps prompted some 600,000 Rwandan and 100,000 Burundi refugees to return to their countries at their own risk. By 6 May 1997, 183,000 refugees had been repatriated to Rwanda by UNHCR. Some 120,000 refugees fled to Kisangani, Ubundu and Masisi, and a further 2,100 took refuge in Tanzania. There is no news of some 140,000 refugees, even though on more than one occasion missing refugees were later found wandering westwards, hiding in the forests or lying low in some locality. The 250,000 refugees lost in November and only found again on 20 December between Shabunda, Tingi-Tingi and Walikale are not an isolated case.[10]

44. The refugees were forced to flee from one camp to another. Some of them went through as many as five camps, perhaps more. They had to travel hundreds of kilometres on foot, without any assistance. They were dispersed over particularly inhospitable areas inaccessible to humanitarian organizations, which meant that most deaths were caused by exhaustion and undernourishment, as well as malaria, cholera and dysentery.

45. Another stratagem used to attack the refugees was recently reported: according to numerous accounts, Alliance forces announce the arrival of humanitarian agencies so that refugees hiding in the forests and listening to the radio will assemble to receive aid; they are then killed or disappear definitively. When the aid agencies arrive, they find no survivors. This happened at Kisuki on 27 March and at Matebo three days later, and there are many other examples.

46. The accounts heard or read by the joint mission show that most of the acts of violence attributed to AFDL were carried out against refugees inside the camps, not only at the beginning of the war but up to at least May of this year. Very often, the targets were neither Interahamwe combatants nor soldiers of the former FAR: they were women, children, the wounded, the sick, the dying and the elderly, and the attacks seem to have had no precise military objective. Often the massacres were carried out after militia members and former FAR soldiers had begun to retreat.

47. The most recent incidents brought to the attention of the joint mission took place at Mbandaka on 13 May. Refugees, most of them women, children and

unarmed men, who were fleeing westwards, were murdered and their bodies thrown into the Congo river, while some 140 refugees were buried by humanitarian organizations and peasants in communal graves. Responsibility for the killings was attributed to the unit responsible for "clean-up" operations, which had already operated in the area south of Kisangani. According to eyewitness accounts, which prompted the Special Rapporteur on the situation of human rights in Zaire and the Special Rapporteur on extrajudicial, summary or arbitrary executions to launch an urgent joint appeal, more than 30 civilians were murdered at Uvira on 26 May by AFDL security forces, while taking part in a demonstration organized in protest at the murder some time earlier of five people who had been kidnapped by Alliance members.

48. Moreover, even in the case of genuine combatants, it should be recalled that neither the Banyamulenge and the Alliance rebels nor the Interahamwe militias and former FAR members take prisoners. This fact was acknowledged by the person known as the Alliance representative in Europe, a Mr. E. Angulu, who also reported that former FAR members and Interahamwe combatants wounded in combat would be taken by their protectors, members of the Zairian armed forces, to Kinshasa, where they could be seen in hospital.

49. However, attacks on the camps were not the only method used to eliminate the refugees.

Blockade of humanitarian assistance

50. The blockading of humanitarian assistance has been a common occurrence, particularly in the days immediately following the conquest or "liberation" of an area. The first such blockade took place at Uvira. For almost the entire month of November, UNHCR was prevented from travelling to the Rutshuru area, and some areas were totally off-limits to it, for instance, the road between Hombo and Walikale, where extremely serious incidents are reported to have taken place. This was also the case in certain areas of Masisi and in the camp near Ikela. As recently as 15 May, the Deputy High Commissioner for Refugees, Mr. Sergio Vieira de Mello, was prevented from travelling beyond kilometre 42 south of Kisangani, where thousands of refugees were awaiting assistance. At the end of May, the blockade was still in force in various areas.

51. These incidents are never presented as a denial of access by the authorities, who generally cite reasons of security. This was the reason given to the Special Rapporteur on the situation of human rights in Zaire when, on 28 March, he was informed that he could not travel to Nyakariba and Niabitaba.[17] A similar situation occurred at Kisangani, where the same objection was made to the Deputy High Commissioner for Refugees.

52. At other times, access to humanitarian assistance has been restricted to a few hours during the day and, in some cases, to a few days.

53. Lack of access to humanitarian assistance has extremely serious consequences: according to some sources, the mortality rate in the camps is between 5 and 25 deaths a day per 10,000 refugees and, in at least one case, 89.5 deaths a day per 10,000 refugees (in disaster situations, even a rate of

1 death a day per 10,000 persons is considered excessive). Nearly half the victims are children under the age of five.

54. Not only is the attitude which the Alliance forces have maintained for eight months now, despite repeated appeals from humanitarian agencies, difficult to explain, but it also prompts the suspicion that it is a more subtle but no less effective tactic aimed at eliminating the Rwandan refugees. The general impression of witnesses is that it is not just a question of sporadic violence, but rather of a skilfully applied stratagem. Those who escape attack risk their lives in the forests, despite the efforts of humanitarian organizations. This impression is borne out by the fact that a number of people claim to have been warned that simply helping Hutu refugees made them the enemy. Clearly, no amount of insecurity or instability in neighbouring countries can be invoked to justify these occurrences.

Situation of internally displaced persons

55. Since the beginning of the conflict in Northern Kivu,[18] large numbers of Zairians have taken refuge in Rwanda - and, in 1996, 40,000 of them in Tanzania - and in other parts of the country. As of 29 July 1996, the number of internally displaced persons was between 250,000 and 400,000.

56. The situation of these persons remains as precarious as that of the refugees. Worse, in fact, since no specialized agency is dealing with their plight. Displaced persons and the Zairian population in general see the refugees as a "privileged" group who receive assistance from international intergovernmental and non-governmental organizations despite the damage - and this is a fact - which their presence has done to the local way of life and environment.

V. ALLEGATIONS OF MASSACRES AND OTHER HUMAN RIGHTS VIOLATIONS

57. The joint mission has received numerous reports and eyewitness accounts concerning allegations of massacres and other human rights violations. It goes without saying that an investigation in situ, as requested by the Commission on Human Rights, will permit these allegations to be verified first-hand.

A. Human rights violations attributed to the Alliance des forces démocratiques pour la liberation du Congo-Zaire

58. The number of reports received by the joint mission has almost tripled by comparison with the 50 allegations of massacres contained in the preliminary report of the Special Rapporteur on the situation of human rights in Zaire.[19] The joint mission did not focus its investigations on individual cases of summary execution, enforced disappearance, torture or other human rights violations, since its core mandate was to gather information and testimony on massacres and other massive violations of human rights. It nevertheless received numerous testimonies concerning such occurrences.

59. The joint mission received information on 134 alleged massacres, most of them carried out by AFDL and the Banyamulenge rebels. Of these, 93 allegedly took place in Northern Kivu, 29 in Southern Kivu and 2 in Upper Zaire. The victims were mainly refugees accused of belonging to the Interahamwe militias or the former FAR, but they also included the residents of predominantly Hutu Zairian villages presumed to have helped the refugees. According to the information received, several thousand people were killed, including large numbers of women and children. Tens of thousands of others, particularly refugees, disappeared involuntarily. Some of them, forced to take to the forests, probably died of disease or malnutrition, if they were not massacred. Some testimonies came from people who had themselves buried bodies in communal graves. Pieces of UNHCR tarpaulin were reportedly still visible on these graves. Many testimonies also mentioned the unbearable stench from mass graves almost everywhere in Kivu.

60. It should be added that, according to some reports, AFDL on several occasions forced the local population to participate in atrocities. For example, Zairian civilians launched a machete attack on the Kisesa I camp (housing some 25,000 people) on 21 April and the Kisesa II camp at kilometre 25 (30,000 refugees) on 22 April, destroying buildings and ransacking the equipment of humanitarian organizations and UNHCR. The reports and testimony received nevertheless assert that the local population participated in these attacks at the instigation and with the support of AFDL soldiers. The current authorities have ordered no investigation into these allegations; on the contrary, they have issued numerous denials. According to many eyewitness accounts, attempts were made to remove all trace of mass and communal graves, for instance, by setting fire to them.

61. Access to Kivu remains very difficult for humanitarian organizations, even as businessmen of all nationalities criss-cross the region in search of lucrative deals, escorted by AFDL forces paid for out of their own pockets.

B. Human rights violations attributed to the Zairian armed forces

62. The joint mission received testimonies and reports of the involvement of members of the Zairian armed forces, acting alone or with others (Bembe militias, for example), in human rights violations. The information received concerns 33 alleged violations, which are different from those already mentioned by the Special Rapporteur on the situation of human rights in Zaire in his preliminary report.[4]

63. Of these 33 alleged human rights violations, 19 were allegedly committed in Southern Kivu, 5 in Upper Zaire, 4 in Northern Kivu, 2 in Shaba and 1 in Eastern Kasai. Twenty-three allegations describe executions and massacres, most of whose victims were Zairian civilians and, more particularly, Banyarwanda. The remaining allegations concern other types of human rights violations, such as torture, rape and pillaging.

64. Both the Special Rapporteur on the situation of human rights in Zaire, on his visit to Goma from 27 to 29 March, and the negotiators who talked to the AFDL authorities at Lubumbashi indicated their willingness to receive any

complaint which AFDL might make against the other parties to the conflict, whether members of the Zairian armed forces, mercenaries or any other person, and to examine and investigate those complaints.

65. In both instances, representatives of the Alliance undertook to provide the relevant information to the Special Rapporteur or the joint mission, as appropriate. Unfortunately, thus far, neither the Special Rapporteur nor the joint mission has received any such information.

C. Allegations of human rights violations attributed to members of the former Rwandan armed forces and the Interahamwe militias

66. The joint mission received 19 allegations of violations committed by members of the former FAR and the Interahamwe militias. Many testimonies reveal that members of the Interahamwe militias and the former FAR engaged in acts of intimidation to dissuade refugees from returning home. One witness said that he had stayed in a number of camps (Idjwii, Kashusha, Nyabibwe, Tebero, Walikale, Tingi-Tingi and Bula) and that the situation was the same in all of them. Many of those who tried to return home, simply announced their intention of doing so or were suspected of wanting to leave were executed.

67. The mission regrets the lack of cooperation from AFDL, which went back on its undertaking to transmit the evidence which it claims to have of atrocities committed by members of the former FAR and the Interahamwe militias.

D. Allegations of human rights violations attributed to other parties to the conflict

68. There is no doubt about the involvement of other parties in the war, including the Rwandan Patriotic Army and the armed forces of Burundi, as well as mercenaries and other militias such as the Mai-Mai and those of the Bembe ethnic group. In any event, the latter always seem to act in concert with other participants and only rarely on their own. When they do so, they appear to be linked with the main parties.

Rwandan Patriotic Army

69. In his annual report, the Special Rapporteur on the situation of human rights in Zaire says that "on at least one occasion (30 October), the Government of Rwanda admitted making an incursion into Zairian territory, and numerous witnesses have confirmed the presence of Rwandan soldiers in Zaire", and that the allegations about a foreign and, in particular, Rwandan military presence in Zaire are plausible.[20]

70. Such foreign involvement could be explained as follows: the Zairian Government did not want to separate members of the Interahamwe militias and the former FAR from the genuine refugees, and thus allowed them to make the incursions mentioned above. As early as March 1995, the Vice-President of Rwanda, General Paul Kagame, expressed concern at the failure of the

international community to prevent the militarization of the refugee camps, which was making incursions possible into his country. He said then that his Government would pursue any criminals who attacked Rwanda by attacking the country in which they were to be found.

71. In September, the President of Rwanda, Pasteur Bizimungu, issued a call from Cyangungu urging young Banyamulenge to send their wives and children to Rwanda and to take up arms again in defence of their rights. This particularly inflammatory speech was criticized by the Special Rapporteur on the situation of human rights in Zaire in his annual report.[21]

72. Furthermore, quite a number of Banyamulenge belong to the Alliance and many of them fought alongside the Rwandan Patriotic Front in 1994, as the Vice-President of Rwanda acknowledged in November 1996. The Special Rapporteur on the situation of human rights in Zaire even stressed that many Zairian Banyamulenge had secured posts in the Rwandan Government.[22] Many of them returned to fight in their homeland. Similarly, the Rwandan Government and the Burundi Government (both of which, like the Banyamulenge, are predominantly Tutsi), reciprocated the support which they had received by sending soldiers to fight against Marshall Mobutu, the former protector of Juvenal Habyarimana's regime.

73. The testimony accusing AFDL of human rights violations often refers to APR complicity. Other testimony, however, especially that received by the joint mission, refers only to the involvement of APR. Most of the victims of the four alleged massacres reported to the mission were refugees, whose bodies were allegedly found in the Semliki, Karoroma, Lubero and Luhule rivers.

Armed forces of Burundi

74. As in the case of Rwanda, the desire to persecute Hutu refugees could explain the involvement of the Burundi authorities in the war in eastern Zaire. It should be recalled that, according to many accounts, the extremist Burundi Hutus of the National Council for the Defence of Democracy were broadcasting messages from Zairian territory inciting people to take up arms against the Government of Burundi.[23]

75. Various accounts refer to the involvement of the armed forces of Burundi, especially at the beginning of the offensive by the Banyamulenge rebels. These accounts mention four incidents in which hundreds of Hutu refugees were allegedly massacred, especially at Gatuma camp in Southern Kivu.

Mercenaries

76. The involvement of mercenaries in the massacres was also finally confirmed. In this connection, the best documented incident is the one which occurred on 8 March, when members of the Zairian armed forces, together with Serbian mercenaries, tortured to death many Zairian civilians, including two priests, in the Kisangani area. The joint mission was also informed that in February 1997, mercenaries, together with members of the Zairian armed forces flying Yugoslav aircraft, allegedly bombed markets and civilian areas in Walikale in Northern

Kivu, killing many people. Similar incidents are said to have occurred at Shabunda in Southern Kivu.

VI. APPLICABLE PROVISIONS OF INTERNATIONAL LAW

77. The question that should be asked is whether or not incidents such as those described above were planned or systematic. From the reports and testimony received, it seems that their systematic nature and advance planning cannot be ruled out. This is illustrated by, inter alia, the tactic of laying siege to camps before attacking them, irrespective of their importance as military targets; summoning the inhabitants of predominantly Hutu towns to meetings in schools or churches, so as to massacre them; issuing appeals over the official radio station urging all those hiding in the forests to come out for medical care and food aid, so as to murder them; and hampering or opposing humanitarian operations in the camps.

78. The involvement of Alliance forces in these incidents is no longer in dispute: such incidents can be explained by a desire to exact revenge for the genocide perpetrated in Rwanda in 1994 and for the persecution and killings in Northern Kivu since March 1993. It should not be forgotten that the Banyamulenge, who admitted to the Special Rapporteur on the situation of human rights in Zaire that they were arming themselves in self-defence,[24] are members of the Alliance and that many of them joined the ranks of the Rwandan Patriotic Front, whose victory triggered the exodus of Rwandan refugees to Zaire and the United Republic of Tanzania.

Do the incidents described constitute a crime of genocide?

79. An initial question is whether or not the incidents described here constitute genocide. According to article II of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

(a) killing members of the group;

(b) causing serious bodily or mental harm to members of the group;

(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) imposing measures intended to prevent births within the group;

(e) forcibly transferring children of the group to another group."

80. There is no denying that ethnic massacres were committed and that the victims were mostly Hutus from Burundi, Rwanda and Zaire. The joint mission's preliminary opinion is that some of these alleged massacres could constitute acts of genocide. However, the joint mission cannot issue a precise, definitive opinion on the basis of the information currently available to it. An in-depth

investigation in the territory of the Democratic Republic of the Congo would clarify this situation.

Do the incidents described constitute violations of international humanitarian law?

81. There is absolutely no doubt that the incidents in question occurred in the context of an armed conflict. None of the parties has denied this and the situation is therefore covered by the Geneva Conventions of 1949, to which Zaire is a party. It is also clear that the conflict involves third countries and has repercussions for other States (return of refugees, new refugee flows, etc.). Nevertheless, the conflict is taking place within the territory of one State. Although the Zairian Government denounced foreign intervention, the entire international community has treated the conflict as a non-international conflict.

82. On the other hand, the obstruction of humanitarian operations and the very serious violations of human rights and humanitarian law documented here can be viewed as a threat to international peace and security, within the meaning of Chapter VII of the Charter of the United Nations.

83. As a result, both the serious incidents reported here and the fact that the rebel forces have effectively controlled certain parts of Zairian territory since September 1996 must be viewed as much more than merely internal disturbances or tensions.

84. Based on the foregoing, the joint mission is of the view that the provisions of article 3 common to the four Geneva Conventions[25] must be applied to the conflict in eastern Zaire.

85. The allegations referred to in this report suggest that while there have been serious breaches of this provision, such breaches can be attributed not only to the Alliance but also to the other parties to the conflict.

Do the incidents described constitute crimes against humanity?

86. The final question is whether or not the incidents described here constitute crimes against humanity.

87. The concept of crimes against humanity was taken up in article 6 (c) of the Charter of the International Military Tribunal, Nürnberg, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, in the report of the Commission of Experts established by Security Council resolution 780 (1992) concerning the former Yugoslavia and, lastly, in the draft Code of Crimes against the Peace and Security of Mankind, prepared by the International Law Commission. Article 18 of the draft Code states that a crime against humanity means "any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a Government or by any organization or group: murder; extermination; torture; enslavement; persecution on political, racial, religious or ethnic

grounds; institutionalized discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population; arbitrary deportation or forcible transfer of population; arbitrary imprisonment; forced disappearance of persons; rape, enforced prostitution and other forms of sexual abuse; other inhumane acts which severely damage physical or mental integrity, health or human dignity, such as mutilation and severe bodily harm".

88. In the joint mission's opinion, the concept of crimes against humanity could also be applied to the situation which reigned and continues to reign in the Democratic Republic of the Congo.

VII. FUTURE ACTIVITIES OF THE JOINT MISSION

89. The joint mission regrets that the authorities in power in the conflict area prevented it from fulfilling its mandate more effectively. In any event, it is awaiting the resolution to be adopted by the General Assembly pursuant to the last part of paragraph 6 (a) of Commission resolution 1997/58 and hopes that the current Government of the Democratic Republic of the Congo will remove the obstacles that the mission encountered when it attempted to visit the area in question and will agree to respect the decisions of the competent United Nations organs.

90. The joint mission has already begun preparations for a further attempt to visit the area where the conflict took place.

91. The difficulties of conducting an investigation of the kind proposed must be understood: it is not easy to coordinate the normal activities of the three members of the joint mission, each of whom has functions to perform in his own country which he cannot simply abandon. Coupled with these considerations is the fact that the planning of work on the ground must be coordinated with the Argentine anthropology and forensic medicine team, which had to change its programme of work at the time of the abortive visit to Zaire.

92. The joint mission therefore hopes that, within the framework of the preparatory mission sent to Zaire on 20 June 1997 by the Secretary-General following consultations with President Laurent Désiré Kabila, the authorities of the Democratic Republic of the Congo will provide the necessary guarantees for the investigation to be conducted in strict compliance with resolution 1997/58, as interpreted by the mission within the above-mentioned terms of reference. As this report was being finalized, the preparatory mission was holding discussions with the Minister for Emergency Reconstruction and Planning and a "Liaison Committee" established for that purpose, but there was still no definite sign that the authorities of the Democratic Republic of the Congo were prepared to respect the above-mentioned resolution.

93. The Government of the Democratic Republic of the Congo will also have to adopt and enforce very tight security measures in order to prevent a recurrence of the situations described above and to ensure the freedom of movement of the joint mission.

VIII. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

94. In addition to the analysis contained in the report of the preliminary mission of the Special Rapporteur on the situation of human rights in Zaire to eastern Zaire in March 1997, the joint mission received testimony and information on the perpetration of massacres and other serious violations of human rights and international humanitarian law. Since the preliminary mission, the number of allegations received concerning massacres and mass grave sites has quadrupled. In addition, it was particularly shocking to note the absence of prisoners of war and the attacks on hospitals and medical centres. These massacres and human rights violations were the result of:

(a) Indiscriminate attacks on refugee camps, in which not only members of the former Rwandan armed forces and the Interahamwe, authors of threats and persons guilty of genocide were killed and wounded, but also many innocent civilians, particularly children, women and the elderly;

(b) The systematic blockade of humanitarian assistance intended for refugee camps, which meant that many refugees died of malnutrition and disease;

(c) The policy of war without quarter, which precluded the taking of prisoners;

(d) Measures of intimidation aimed at forcing refugees to flee into the forests and towards hostile areas where access by humanitarian missions was absolutely impossible.

95. As of now, the joint mission can say that there are reliable indications that persons belonging to one or other of the parties to the conflict in eastern Zaire, now Democratic Republic of the Congo, probably committed serious violations of international humanitarian law, particularly of article 3 common to the four Geneva Conventions of 1949, between early September 1996 and 17 May 1997. These violations of international humanitarian law were committed mainly by AFDL, the Banyamulenge and their allies (68.02 per cent of the allegations received). They were also committed by the Zairian armed forces (16.75 per cent of the allegations received); the former Rwandan armed forces and the Interahamwe (9.64 per cent of the allegations received); the Rwandan Patriotic Army (2.03 per cent of the allegations received); the armed forces of Burundi (2.03 per cent of the allegations received); and mercenaries (1.52 per cent of the allegations received) fighting on the side of the Kinshasa Government. It should be stressed that the joint mission also identified more than 30 cases in which the authors could not be determined. Such crimes seem to be sufficiently massive and systematic to be characterized as crimes against humanity. Until a more in-depth investigation is able to identify their perpetrators, they should be declared not subject to statutory limitations, in accordance with the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 26 November 1968. Moreover, their authors could be brought to trial before international tribunals, as was decided in the case of the former Yugoslavia and Rwanda.

96. Following an in-depth study of all the testimony and other information available, the question of whether a genocide was planned and executed should be asked. The common ethnic identity of most of the victims is a matter of record: Zairian Hutus and Hutu refugees from Rwanda and Burundi. The methods used, namely, deliberate, premeditated massacres, the dispersal of refugees to inaccessible, inhospitable areas, the systematic blockade of humanitarian assistance and the stubborn opposition thus far to any attempt to conduct an impartial, objective investigation into the very serious allegations received are particularly troubling. However, in the absence of access to the scenes of the alleged crimes and a more in-depth and comprehensive investigation, the joint mission can only reserve its response to this question for the time being. The seriousness and the number of the allegations received confirm the need for the international community, particularly all the States parties to the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, to devote sustained attention and top priority to the urgent need to bring an immediate halt to the human rights violations and the blockades and to conduct in the territory of the Democratic Republic of the Congo, and in any other territory that may be appropriate, the in-depth, impartial and objective investigations that the question of genocide warrants.

97. The joint mission is equally concerned at the persistence of serious allegations of human rights violations and massacres committed, particularly in Northern and Southern Kivu, and at the violent suppression of mass demonstrations. In this connection, the summary executions which accompanied the seizure of power in Kinshasa bear out concerns about the actions of Alliance soldiers out of range of the cameras and raise worrying questions about their future role in a society that is supposedly making the transition to democracy. More than ever, the situation calls for in-depth, independent investigations to be conducted urgently throughout the territory of the Democratic Republic of the Congo.

98. The joint mission regrets that its mandate covers only those incidents which have occurred since September 1996, as the main cause of the conflict in the Congo was the massive influx of refugees from Rwanda and Burundi into the eastern part of the country following the massacres and genocide which took place in Rwanda between April and July 1994. The mission feels that its mandate could be altered ratione temporis to permit more exhaustive investigations.

99. The joint mission expresses its gratitude to the Secretariat and to the officials of the humanitarian agencies of the United Nations system working in the Great Lakes region and at the various headquarters, for the support which they provided, and to the non-governmental organizations which transmitted invaluable information to it.

100. The joint mission was set up at the proposal of the Special Rapporteur on the situation of human rights in Zaire, who felt that the dissemination of the reports of the mechanisms of the Commission on Human Rights, the confidence shown in them by human rights organizations, the coordination that exists among all those mechanisms and the expertise, impartiality and independence of the rapporteurs and members of working groups on these questions would guarantee the credibility of its reports.

101. Nevertheless, the honorary, part-time nature of their mandates prevents the persons in charge of these mechanisms from devoting themselves entirely to their tasks, which are some of the most important tasks assigned by the United Nations in the area of the protection of human rights. Moreover, these mechanisms were established by the Commission on Human Rights, a technical organ of the Economic and Social Council which does not have the means to implement its decisions. The special rapporteurs' only strength lies in the professionalism of their reports, their integrity and their reputation. The Alliance's case is not the first in which a Government or authority under investigation has refused to cooperate in any way, meaning that alternative investigation modalities have to be considered. Whatever investigations may be conducted in future, they will have to meet the following criteria: they will have to be thorough, impartial and professional and entrusted to objective individuals with expertise in the field of human rights who can devote themselves entirely to their tasks, in complete independence and free from political influence of any kind, and who can formulate their conclusions in a report that can be circulated widely.

B. Recommendations

To the Government of the Democratic Republic of the Congo

102. The joint mission recommends to the Democratic Republic of the Congo that it:

(a) Clearly demonstrate its attachment to the cause of human rights by unequivocally and publicly condemning the atrocities described in this report and by pledging to do its utmost to put an end to them;

(b) Put an immediate end to the blockade of humanitarian assistance intended for refugees and displaced persons and take all appropriate steps to end the suffering of the most disadvantaged refugees, particularly dispersed refugees, women, the elderly and children;

(c) Guarantee the security and the right to life and physical integrity of anyone who is in the territory under its jurisdiction;

(d) Cooperate unreservedly with the mission charged with investigating allegations of massacres and other human rights violations in the eastern part of the Congo, ensure that it has unimpeded access to the territory and give it the necessary security guarantees; protect the sites of massacres and guarantee the security of any witnesses, in strict accordance with the decisions of the competent United Nations organs, particularly Commission on Human Rights resolution 1997/58. In particular, the mission's freedom of movement and security must be guaranteed, so that the incidents reported by the security officer and described in section II of this report do not recur;

(e) With respect to the allegations of massacres and violations of human rights and international humanitarian law, order official, impartial investigations which conform to United Nations norms on the effective prevention and investigation of extrajudicial, arbitrary and summary executions and other applicable norms. Investigation of the allegations described in this report

will have to be entrusted to persons of the highest moral standing, acting with complete independence and having considerable expertise in this field. The report will have to be made public. In addition, all necessary measures will have to be taken to end impunity and the cycle of criminal violence, in order to promote the full and complete attainment of the rule of law in the Democratic Republic of the Congo;

(f) Promote the rule of law, in particular by establishing an effective, independent and impartial judicial system that provides guarantees against the impunity which, once again, is the main cause of the persistence of human rights violations throughout the Great Lakes region;

(g) Establish a genuine civil service and, in particular, a civilian police force that is separate from the military forces of the Alliance and that respects international rules on the use of public force by law enforcement officials. In this connection, anyone accused of participating in torture, summary executions or enforced disappearances must not be admitted to the police force;

(h) Enable United Nations agencies, in particular the Office of the High Commissioner for Human Rights/Centre for Human Rights, UNHCR, UNICEF and the World Food Programme, and other humanitarian organizations to carry out their work with a view to solving the problems confronting the Democratic Republic of the Congo, with particular emphasis on the protection of women, children and the elderly, whether refugees or victims of forcible dispersal or displacement, and of the sick and wounded.

To the United Nations and the international community

103. The joint mission makes the following recommendations to the United Nations and the international community:

(a) The Security Council could envisage the immediate dispatch of military and/or police observers to areas where there is little or no security;

(b) The necessary steps should be taken to ensure that the investigation of massacres and other human rights violations can be carried out in cooperation with the Government of the Democratic Republic of the Congo, using all necessary technical and human resources;

(c) With reference to the content of paragraph 102, the following two options can be envisaged:

(i) Either retain the existing mission and add professional investigators to it who will remain in the field throughout the mission's mandate and work under the authority of the independent experts, with all necessary guarantees for their security and freedom of movement;

(ii) Or establish, under the aegis of the Security Council, a standing commission whose experts will be able to remain in the field for as long as their mandate requires, without prejudice to the powers already attributed to the Commission's non-treaty mechanisms;

(d) Without prejudice to any resolution that may be adopted by the General Assembly, the possibility should be considered of convening a special session of the Commission on Human Rights, given the ratione temporis and ratione loci limitations placed on the joint mission's mandate and the explosive situation currently prevailing in the Democratic Republic of the Congo;

(e) Humanitarian corridors should be established so that refugees hiding in the forests can have access to humanitarian organizations and be repatriated to their own countries if they so wish, and, in general, the international duty of protection for refugees under the Convention on the Status of Refugees of 28 July 1951 should be respected and enforced;

(f) The necessary steps should be taken to ensure that persons who are accused of participating in the genocide in Rwanda and are currently mingled with the refugees appear before the competent international criminal tribunal;

(g) The necessary steps should be taken to halt arms trafficking in the Great Lakes region and to publicize the report prepared by the International Commission of Inquiry established under Security Council resolution 1013 (1995) and maintained pursuant to resolution 1053 (1996) on this question.

To the Governments of neighbouring countries of the Democratic Republic of the Congo

104. The joint mission recommends to neighbouring countries that they:

(a) Take in the refugees who are in their territory, respecting the right of asylum and halting the mass expulsion of refugees;

(b) Protect the refugees and disarm any asylum-seekers who may be armed;

(c) Prevent their territory from being used to infiltrate and destabilize other neighbouring countries.

To the Government of Rwanda

105. The joint mission recommends to the Government of Rwanda that it, in particular:

(a) Take in the Rwandan refugees, particularly those repatriated from the Democratic Republic of the Congo, guaranteeing their security and fully respecting their fundamental rights. In this connection, the policy of rounding up returnees must not encourage the practice of summary executions, enforced disappearances, settling of scores or arbitrary detentions. Where there is reliable evidence of participation in the genocide, the persons concerned must be given a fair trial which respects the presumption of innocence and the rights of defence before an impartial court;

(b) Order in-depth, independent and impartial investigations in accordance with the relevant United Nations rules, entrusting them to independent persons of the highest moral standing and with the requisite expertise, and bring the

alleged perpetrators of such violations before the courts, regardless of their rank;

(c) The Government of Rwanda must also clearly demonstrate its attachment to the cause of human rights by unequivocally and expressly condemning, like the Government of the Democratic Republic of the Congo, the atrocities described in this report.

Notes

[1] The following abbreviations will be used in the present report:

AFDL	Alliance des forces démocratiques pour la libération du Congo-Zaïre
APR	Rwandan Patriotic Army
FAB	Armed forces of Burundi
FAR	Rwandan armed forces
FAZ	Zairian armed forces

[2] In the present report, the name Zaire will be used in all cases in which the events in question occurred prior to 17 May 1997, and the name Democratic Republic of the Congo will be used in the case of events occurring from that date onwards.

[3] That mission took place from 25 to 29 March 1997 and was intended to investigate allegations of massacres of Hutu refugees in eastern Zaire (E/CN.4/1997/6/Add.2).

[4] E/CN.4/1997/6/Add.2.

[5] Ibid., paras. 21 and 45.

[6] Ibid., para. 49.

[7] E/CN.4/1995/67, paras. 85 to 95.

[8] E/CN.4/1996/66, paras. 23 to 32.

[9] E/CN.4/1997/6/Add.1.

[10] E/CN.4/1997/6, paras. 164 to 169.

[11] Paras. 96 to 103 and 275 of the first report; paras. 44, 45, 51, 131 and 132 of the second report; paras. 157 to 163 and 233 of the third report; and paras. 86 and 126 (d), (e), (f), (g) and (i) of the report on the mission to Rwanda in July 1996.

[12] For the causes and initial development of the conflict, see the report of the Special Rapporteur on the situation of human rights in Zaire (E/CN.4/1997/6, paras. 170 to 189). The Special Rapporteur warned against the possibility of

such a conflict, even before it broke out, in document E/CN.4/1997/6/Add.2, following his visit to Rwanda in July 1996.

Briefly summarized, the long-term causes of the conflict are that "frontiers were drawn between various colonies regardless of the borders recognized by the 'original' ethnic groups and this situation was aggravated by the transplantation of populations"; to these must be added a political cause, the withdrawal of Zairian nationality from the Banyamulenge, Tutsis who had been established in Zaire for generations; the massive influx of Rwandan refugees following the genocide in their country, and its disastrous consequences for the local economy and environment; and, lastly, incitement by the authorities, who were pushing for the expulsion of all Rwandans - Hutu or Tutsi - from the territory of Zaire.

Such incitement prompted the Banyamulenge to organize to defend themselves in the face of threats of expulsion, so much so that initially the war was termed the war of the Banyamulenge and was led by one of them, Miller Ruhimbika. The Banyamulenge enjoyed the full support - weapons, personnel and resources - of the authorities in power in Rwanda and Burundi, who were also Tutsis. The nationality issue subsequently receded because the conflict, as it developed, turned into a war, directed by AFDL under the leadership of Laurent Kabila, against the dictatorship of Mobutu Sese Seko, former ally of the late President of Rwanda, Juvenal Habyarimana.

[13] E/CN.4/1997/6/Add.1, paras. 121 and 123.

[14] Ibid., paras. 122 and 124.

[15] See the reports of the Special Rapporteur on the situation of human rights in Zaire: E/CN.4/1995/67, para. 96; E/CN.4/1996/66, paras. 32, 44 to 51 and 132; E/CN.4/1997/6, para. 157; E/CN.4/1997/6/Add.1, especially paras. 38 to 41, 51, 75 and 76.

[16] E/CN.4/1997/6, para. 160.

[17] E/CN.4/1997/6/Add.2, para. 13.

[18] E/CN.4/1996/66, paras. 23 and 31, and almost the entire report in document E/CN.4/1997/6/Add.1.

[19] E/CN.4/1997/6/Add.2.

[20] E/CN.4/1997/6, paras. 178 and 179.

[21] Ibid., para. 181 and note 11.

[22] Ibid., para. 178 and note 10.

[23] E/CN.4/1996/66, paras. 55 and 56.

[24] Ibid., para. 37.

[25] In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for. (...)